

## **Review Comments on Oregon's NPS Program Progress in (calendar year) 2012**

### **Utilization of Oregon's Clean Water Act (CWA) Section 319 Funding Allocation**

As indicated in the Annual Report, yearly CWA Section 319 funding provided by EPA to Oregon is split between the Oregon Performance Partnership Grant (PPG) - to fund staff supporting the NPS program - and a separate 319 grant funding local 319 projects. Last year, approximately 42% (\$905,000) of Oregon's total FY 2012 Section 319 funding allocation of \$2,172,000 was directed to twenty-six (26) 319 projects. The remainder of the State 319 allocation was directed to the PPG to fund approximately nine positions supporting NPS program management and administration, Total Maximum Daily Load (TMDL) development and implementation (including watershed-based planning efforts), and related program functions.

Thank you for including descriptions in the Annual Report of how 319 funds were used under both the PPG to support specific NPS/319 program priorities and commitments, and under the yearly 319 grant to fund local 319 projects throughout the state.

### **Local 319 Project Implementation**

The Annual Report describes the process ODEQ used to evaluate local projects for funding in 2012 under the State geographic and programmatic priorities. The projects include riparian restoration, best management practices (BMPs) and TMDL implementation, the Pesticide Stewardship Program (PSP), and education and outreach. ODEQ also leverages the federal 319 grant funds with Oregon Watershed Enhancement Board (OWEB) salmon recovery funding, as described in the Oregon Plan for Salmon and Watersheds. The EPA continues to strongly support these cooperative NPS funding efforts.

The progress of all local 319-funded projects during 2012 is summarized (and examples provided) in the Annual Report. Thank you for including this summary. Due to the State 319 grants being awarded by the EPA yearly, each with multiple-year grant periods, a considerable number of individual 319 projects (over 40) were in progress during 2012. In 2012, twenty-six (26) new projects were funded. Due to concerns in the 319 program nationally about unexpended 319 funds, we appreciate ODEQ's continued successful management and completion of these sub-grant watershed projects within the grant time period. We also commend the ODEQ regional offices conducting project oversight and monitoring, and providing local technical assistance.

### **Impaired Waters, TMDLs, and Watershed-Based Plans**

Most impairments to Oregon waterbodies result from nonpoint sources. Many of the impairments are due to temperature and bacteria, in addition to the pollutant loads tracked nationally. The Annual Report describes the process and timeline for developing TMDL implementation plans through the Designated Management Agencies (DMAs), ODEQ's oversight role, and efforts to incorporate the nine key watershed-based plan elements into the implementation plans.

The Annual Report describes in detail ODEQ's overall Watershed Approach, which consists of two primary components: a Basin Status Report and a Basin Action Plan. These have been completed for

the North Coast, Deschutes, and Rogue Basins, with three more planned to be completed per year statewide. The next ones to be completed include Clackamas and Sandy River, South Coast, and Power/Burnt. This broader watershed planning process (addressing various water program areas and actions within a basin) may also inform the development of watershed-specific TMDLs. The Annual report also describes ongoing efforts to integrate the nine watershed-based elements with TMDL implementation plans and to develop "Implementation-Ready" TMDLs within the coastal zone (further discussed below). The EPA supports ongoing ODEQ efforts to incorporate the watershed-based planning and prioritization approaches to guide implementation of state 319 projects. The Annual Report also describes TMDLs approved or under development in 2012.

### State Revolving Fund NPS Projects

ODEQ provided three additional loans in 2012 (totaling just over \$15 million) through the Clean Water State Revolving Fund (CWSRF) loan program for NPS projects. These included two loans to irrigation districts (Farmers and Three Sisters) serving central Oregon (to maintain minimum flows and reduce water loss and turbidity), and one to the Clackamas County Soil and Water Conservation District (to finance stream protection projects in that watershed).

Since 2004 Oregon's CWSRF program has provided \$75 million for NPS improvement projects. The EPA strongly supports the use of CWSRF financing for NPS pollution control projects, especially given the decline in available 319 funding, and looks forward to working with ODEQ to continue to leverage CWSRF and 319 funding.

### Drinking Water Protection, and Groundwater Management Areas

Nonpoint sources also contribute to groundwater contamination in the State. The Annual Report provides a detailed update on ODEQ and other state agency involvement in groundwater protection activities, including source water assessments and plans, watershed-specific protection strategies, smart growth projects, model ordinances, a GIS demonstration project in the Tualatin Watershed, continued drinking water contaminant monitoring and analyses, pesticide collection events, development of a BMP database for 88 contaminants, and participation in development of ODEQ's Harmful Algal Bloom Strategy.

Concern over elevated nitrate in groundwater led to designation by ODEQ of the Southern Willamette Valley, Lower Umatilla Basin, and Northern Malheur County as Groundwater Management Areas (GWMAs) and subsequent actions which have been undertaken to reduce nitrate concentrations, as indicated in the Annual Report. Of particular note are ongoing activities to date (education, outreach, groundwater monitoring, and inter-agency coordination) within the Southern Willamette GWMA and further tasks implementing the Action Plans and specifically addressing nitrates within the Lower Umatilla and Northern Malheur GWMAs in 2012.

### Coastal Nonpoint Pollution Control Program

The Annual Report provides an update for 2012 on Oregon's Coastal Nonpoint Pollution Control Program (CNPCP) under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The State program was conditionally approved by the National Oceanic and Atmospheric

Administration (NOAA), and EPA, subject to three outstanding measures pertaining to new development, on-site sewage disposal, and additional forestry management. Pursuant to the subsequent Settlement Agreement, a process and timeline for actions addressing the remaining management measures was initiated in 2010, as outlined in the Annual Report. This includes the development of TMDL Implementation Guidelines. Both NOAA and EPA reviewed and provided comments on these proposed approaches during 2012.

At this juncture, it does not appear that ODEQ is making sufficient progress to meet the timelines under the Settlement Agreement for developing approvable measures under CZARA. EPA will continue to work with NOAA and ODEQ to ensure all actions are achieved under the prescribed settlement agreement with the goal of full CNPCP approval. We thank ODEQ for your efforts toward meeting the remaining management measures and reporting on the continued progress of these proposed actions in the Annual Reports.

### Water Quality Monitoring and Assessment

The Annual Report describes monitoring and assessments conducted throughout the state in support of TMDLs, water quality standards reviews, toxics reduction efforts, groundwater management, the ambient monitoring program, and volunteer efforts. ODEQ completed development of a draft toxics reduction strategy in 2011. During the year the state also adopted human health criteria based on a revised fish consumption rate. The Annual Report highlights ODEQ's further involvement in toxics monitoring on a watershed basis in 2012, the ongoing review of sampling plans and data, technical assistance to state organizations, and sampling in three of the designated groundwater management areas.

Water quality monitoring is critical to the NPS program (and watershed-based planning framework) in order to identify water quality problems, set project priorities, and assess the effectiveness of implementation. We appreciate the summary of monitoring efforts in the Annual Report and fully encourage all monitoring in support of the NPS program statewide.

### Agricultural Lands and Pesticide Stewardship Partnerships

The Annual Report describes how ODEQ is addressing water quality issues on agricultural lands through coordination with the Oregon Department of Agriculture (ODA), the National Resources Conservation Service (NRCS), the state Soil and Water Conservation Districts (SWCDs), and other organizations. ODA is responsible for developing State Agricultural Water Quality Management Plans and meeting water quality standards and TMDL load allocations on agricultural lands, and works directly with the local SWCDs. ODEQ participates in the review of those plans and coordinates with ODA (e.g. on pesticides and toxics issues). The Annual Report also cites ODA compliance actions, and outreach activities by ODA and the SWCDs. In 2012 DEQ and ODA also completed and signed a Memorandum of Agreement (MOA).

Progress under the Pesticide Stewardship Partnerships (PSPs) continued in 2012 within Eastern Oregon and the Willamette Valley, including monitoring, outreach, education and the collection events. The Annual Report cited significant reductions in the concentration of herbicides and pesticides in the Walla Walla and Wasco County watersheds respectively as well as continued improvements in the Hood River

Watershed. The use of 319 funds for the pesticide program has strengthened water quality protection efforts through community involvement, education, data collection, and BMP implementation actions.

The Annual Report describes the Conservation Effectiveness Partnership and MOU previously initiated in 2010 between ODEQ, NRCS and OWEB with the goal of evaluating the effectiveness of funded restoration actions.

The MOU identified two pilot studies undertaken in the Tillamook Bay watersheds and the Upper Deschutes sub-basin to examine the effectiveness of actions (e.g. to address bacteria and temperature) in order to better coordinate and direct restoration efforts. The evaluation of monitoring data, indicating positive trends in these watersheds, continued in 2012 and outreach efforts have been initiated with the support of NRCS. We appreciate these efforts and acknowledge ODEQ coordination with NRCS (including participation on the state and local NRCS technical advisory committees) to better identify project priorities, success stories, and address NPS pollutants from agricultural lands.

### Forests and Rangelands

The Annual Report describes efforts to address water quality issues on forests and rangelands. ODEQ continued to participate with the Oregon Department of Forestry (ODF) on the RipStream (Riparian Function and Stream Temperature) project, which is evaluating whether current riparian protections on fish-bearing streams are adequate to meet water quality standards for temperature. The results of the initial analysis (on state forest lands and private lands) are presented in the Annual Report. Coordination also continued between ODEQ and the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) through the respective MOUs with those agencies on federal lands. TMDLs are implemented on USFS and BLM lands (as the federal DMAs) through Water Quality Restoration Plans (WQRPs). The key findings of the final draft DEQ/BLM/USFS five-year MOA progress report, status of restoration projects, and needed areas for improvement were cited in the Annual Report. An updated DEQ/BLM MOU was completed in 2011, and the final draft of the DEQ/USFS MOU was completed in 2012.

The EPA strongly supports ODEQ collaborative partnerships with the ODF, USFS, and BLM addressing watershed protection and restoration activities on private, state, and federal lands. The EPA also agrees with the stated need for the agency MOUs and actions to focus on implementation, monitoring, and achievement of water quality standards.

### Measuring Progress under the NPS Program (Load-reductions and Success Stories)

Section 319 of the CWA requires states to report annually on: (1) progress in meeting NPS Program milestones, (2) reductions in NPS loading, and (3) improvements in water quality resulting from NPS program implementation. National NPS program measures were developed under these objectives, including WQ-10 (NPS-impaired waterbodies which are partially or fully restored as documented through Success Stories), WQ-9 (reductions in nitrogen, phosphorous, and sediment from 319 projects through the Grants Reporting and Tracking System (GRTS), and SP-12 (water quality improvement on a watershed basis). We appreciate the efforts by ODEQ to document improvements to water quality resulting from NPS implementation and 319 funding.

Documentation for partial or full restoration/attainment of water quality standards (WQ-10) is through publication on the EPA's Success Stories website. Oregon has one WQ-10 Success Story for Diamond Lake. Stories which do not yet count toward WQ-10, but do document progress toward attainment of water quality standards, or document ecological restoration, can also be published on that website. Excellent examples of published "progress" success stories for Oregon include the Bear Creek Watershed (phosphorous reductions), published in 2010, and the Tualatin River watershed (phosphorous, chlorophyll *a*, pH, and bacteria improvements), published in 2011. The Annual Report also highlights ODEQ success stories resulting from restoration actions and BMPs implemented in other watersheds throughout the state. We appreciate the assistance ODEQ provided to develop and highlight these stories.

Annual nitrogen, phosphorous, and sediment load reductions from 319 projects were modeled and entered into GRTS by ODEQ, and summarized in the Annual Report. The load reduction estimates for projects reported for 2012 totaled 6,095 pounds/year nitrogen, 2,136 pounds/year phosphorus; and 1,295 tons/year sediment. We commend Oregon for continued progress in reporting load reductions by the yearly March 15<sup>th</sup> national deadline while recognizing that other impairments (e.g. bacteria, temperature) are also being addressed by 319 projects in Oregon watersheds.

#### Update of Oregon's 2000 Nonpoint Source Management Plan

A primary EPA management goal stemming from the national nonpoint source program study which EPA prepared for the Office of Management and Budget in 2011 was for 50% of the state NPS management plans (which are outdated) to be updated by the end of FY 2013. EPA provided further guidance on the focus and content of these updated plans in 2012. The NPS plan elements outline the general approach, particularly as pertains to the updating of program goals, priorities, milestones, and cooperative agency involvement.

We understand ODEQ is in the process of updating Oregon's 2000 NPS Management Plan and has included in the PPG the commitment to complete the update in 2013. We will assist in the review of the draft plan, when anticipated, prior to it being finalized and submitted for EPA approval. State NPS plan updates should then provide the framework for prioritization of watershed projects, the annual Section 319 grant/PPG workplans and reviews, and the yearly NPS program progress determinations.

## Checklist for Determining Progress of State NPS Management Programs in 2012

### Oregon Department of Environmental Quality (ODEQ)

Completed by US EPA Region 10, May 2013

(Also see R10 annual progress review letter and detailed comments)

Regions should review the progress that each State is making in implementing its nonpoint source (NPS) management program and provide written documentation of this progress. Specifically, and at a minimum, prior to awarding grants under section 319(h), Regions should document the extent to which each State meets foundational aspects of program progress and 319 grant management. For this interim guidance the following approach applies. These aspects should be assessed as a whole in making a determination, with each response constituting information, or a line of evidence, that will lead towards a decision based on the region's best professional judgment. Regions retain latitude for how each checklist response is weighted and have the flexibility to incorporate additional considerations in their determinations; negative responses to a question may be supplemented with a justification or description of a corrective action underway.

The final determination of progress of State NPS management programs is to be made by the Regional Administrator or delegated authority. The checklist for this determination should be completed by the appropriate regional 319 program staff (typically, the CWA Section 319 Grant Project Officer for non-PPG awards and the CWA Section 319 NPS Program Coordinator for states that include 319 grant awards in a PPG) and included with the documentation for the grant.

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### Meeting Statutory and Regulatory Requirements and Demonstrating Water Quality Results

1. Section 319(h)(8) requires EPA to determine if a state has made satisfactory progress in meeting a schedule of milestones to implement its NPS management program.
  - a) Has the state updated its NPS Management Program with up-to-date trackable performance milestones and/or has the state established up-to-date trackable performance milestones for reducing NPS pollution as a result of an ongoing continuous planning process? **Response:** Oregon DEQ has not completed an update to their previously-approved 2000 NPS Management Plan; however, it is planning to prepare an update, which is scheduled for completion in 2013. In the interim, Oregon DEQ is operating under the overall goals and objectives of the 2000 Plan. More specific trackable tasks have been included and updated in the Oregon PPG workplan (pertaining to the NPS and Section 319 programs) and are tracked primarily through that PPG and the detailed annual NPS performance report (the most recent covering the CY2012 period).

- b) In what document(s) is this schedule located? States that include 319 grants in PPGs should also consider any Priorities and Commitments associated with the State's NPS management program. **Response:** See above response. Note, Oregon DEQ and EPA R10 operate under a two-year PPG and PPA which includes NPS and 319 commitments, including one to update their NPS plan. Oregon's 319 funds go into both the PPG and into yearly categorical 319 grants directly funding local 319 implementation projects.
- c) Has the State reported its progress in meeting the schedule of milestones? In what document is this progress reported (annual report, other—specify)? **Response:** Yes. Annual progress is reported through: (1) the annual NPS progress report, (2) the Grants Reporting and Tracking System (GRTS), and (3) the Oregon DEQ/EPA R10 PPA/PPG.
- d) Does this report required by section 319(h)(11) cover progress made over the previous fiscal year (i.e., not two or more years ago)? **Response:** Yes, the most recent (2012) annual report covers calendar year 2012.
2. Section 319(h)(11) requires each State to report on an annual basis reductions in NPS pollutant loading and improvements in water quality.
- a) Considering projects and activities from all open grants as applicable, has the State reported improvements in water quality resulting from implementation of its NPS management program and/or previous years' 319(h) grant work plans? Using best professional judgment, did the State report on incremental water quality improvements for NPS-impaired waterbodies or watersheds (e.g., improvements that have not yet led to attainment of water quality standards)? **Response:** Monitoring is being primarily conducted under Oregon's ambient monitoring program. Limited post-project monitoring is being conducted, however additional emphasis on (and funding for) effectiveness monitoring is needed to report incremental water quality improvements resulting from project implementation. See following discussion of state reporting of water quality improvements through "showing progress" and WQ-10 Success Stories.
- b) Did the State meet its annual commitment/target/goal (if any) under WQ-10? **Response:** Although there is no state-specific target, the Oregon DEQ/EPA PPG includes a commitment to prepare Success Stories documenting either water quality progress or water quality restoration/attainment (WQ-10). Oregon has one WQ-10 story (Diamond Lake), and two additional "showing progress" Success Stories for Oregon (Bear Creek and Tualatin River) have been completed and posted on the EPA Success Story website.
- c) If applicable, did the State meet its annual commitment/target/goal under WQ-SP12 for NPS-impaired watersheds? **Response:** Not applicable (as state specific target or goal).
- d) To the extent that information is available, did the State achieve and report load reductions for pollutants beyond sediment and nutrients (e.g., bacteria) pursuant to implementation of TMDLs and watershed plans? [Per 319(h)(11), this applies to the state's NPS management program, not just the 319-funded portion.] Briefly explain.

**Response:** The state is monitoring for pollutants under which TMDLs were prepared and reported load reductions toward the national targets as required through GRTS, for nitrogen, phosphorus, and sediment. However, the state also has reported water quality improvements for other impairments (e.g., bacteria, temperature) through its Success Stories .

### **GRTS Reporting**

For this section, it is sufficient to report on the results of previously conducted post-award grants monitoring. No additional monitoring may be needed.

1. To ensure that the State meets the reporting requirements in section 319(h)(11), did the State enter all mandated data elements into GRTS (including geo-locational tags where available) for all projects in the previous 319 grant award on time? Please also specify what length of time the Region allows for this. [The national requirement is “within 90 days of grant award;” the Regional requirement may be shorter.] **Response:** The Region follows previous HQ guidance indicating that the mandated elements (for previous year projects) be entered by April 1, and Oregon meets this requirement. Although the Oregon 319 grants are conditioned to enter mandatory elements within 90 days of award, all 319 project sub-grant mandated elements may not entered strictly within 90-days of the state 319 grant award.
2. For all active projects that have nonpoint source reduction goals for nutrients or sediment, is the State reporting load reductions (WQ-9) into GRTS after the first year of project implementation? Did the State report them by the February 15 deadline for the previous fiscal year? (i.e., Were load reductions reported for all projects implementing BMPs in FY2010 entered by Feb 15, 2011?) **Response:** Yes, Oregon met the 2/15/12 (and also the 2/15/13) load reduction reporting deadlines.

### **Implementing Priority Watershed-Based Plans**

1. Is the State implementing nine-element watershed-based plans with at least 80% of its incremental funds in accordance with EPA’s guidelines for CWA 319(h) grants? If this was determined during the Region’s reviews of the State’s active grant workplans, is it sufficient to document the results of these previous findings. **Response:** Oregon does direct at least 80% of its 319 incremental funds (going into both the categorical 319 grants and into their PPG) to local implementation project subgrants, and to NPS and TMDL program staff activities which support TMDL and watershed-based plan integration and implementation in impaired waters. EPA continued to work with Oregon to incorporate the nine key watershed-based plan elements into the state TMDL implementation planning process involving the state designated management agencies. EPA Region 10 reviewed and approved all Oregon 319 project workplans.
2. Are plans being implemented for the highest priority NPS-impaired watersheds consistent with EPA’s guidelines for CWA 319(h) grants (e.g., those with completed TMDLs, those

where other state, federal or local agencies are also contributing funding) or in special circumstances for protection of high priority watersheds that are not yet impaired?

**Response:** Yes. Also see above response.

### **Ensuring Fiscal Accountability**

For this section, it is sufficient to briefly report on the results of previously conducted grants management and oversight required of all project officers.

1. **Tracking and Reporting.** For all active 319(h) grants using existing post-award monitoring or best professional judgment:

- a) Does the State have adequate tracking and fiscal reporting practices in place for financial accountability? **Response:** Yes
- b) Is State's RFP process efficient and timely for selecting and funding projects within work plan timeframe? **Response:** Yes
- c) Did the State obligate all 319(h) funds within one year per current 319 grant guidelines? **Response:** Yes

2. **Rate of Expenditures.** Examine a summary of expenditures for all open 319 grant awards listing the following: State; grant #; FY; project period; grant award amount; balance (unliquidated obligation); percent unliquidated obligation. This information could also be pulled from other EPA tools such as GRTS or the Post Award Baseline Tracking Tool. Include a State total of grant award amount, balance and percent unliquidated obligation. Please reference the source and date of information used to answer the question below.

**Response:** Source for below for Oregon is Compass, EPA Financial Data Warehouse as of 5/03/13. Note that Oregon's 319 funds (PRC 202B01E) were drawn from five open categorical 319 grants ("C9" code) and from the current 2-year state PPG ("BG" code) during 2012:

OREGON DEQ- CWA 319 Grant Balances (Unliquidated Obligations)								
Based on Compass Federal Data Warehouse Online as of May 3, 2013 (319 - PRC 202B01E awarded funds)								
	Grant #	FY	Project		Period	Grant Award Amount	Balance (ULO)	% ULO
OR	C900045108	08	05/01/08	-	12/31/12	\$ 1,387,400	\$ 0	0%
OR	C900045109	09	05/01/09	-	12/31/13	\$ 1,687,109	\$ 97,985	5.8%
OR	C900045110	10	06/01/10	-	12/31/14	\$ 1,381,409	\$ 266,271	9.7%
OR	C900045111	11	07/01/11	-	12/31/14	\$ 1,111,832	\$ 548,127	49.3%
OR	C900045112	12	06/01/12	-	12/31/15	\$ 905,000	\$ 872,700	96.4%
OR	BG00J56501	12	07/01/12	-	06/30/14	\$ 1,248,951(PPG)	\$ 52,584	4.2 %
				-				
OR	Total:					\$ 7,721,701	\$ 1,837,667	23.8%

- a) Relying on best professional judgment or empirical evidence as may be available, do the figures in the Rate of Expenditures chart substantially match the expected drawdown rates from the associated grant work plan schedules? **Response:** Yes. **NOTE:** grants performance reviews are conducted through IGMS post-award monitoring, advanced post

award monitoring (checklist and letter reviews), annual state NPS performance reports, OR PPG reviews, GRTS, and satisfactory progress reviews and determinations, which are documented through letters to the state (see grant PO files for individual 319 grants).

### **Considering PPG Priorities and Commitments**

1. If a State puts part or all or part of its 319 grant funding in a PPG, using best professional judgment, has the state adequately documented progress consistent with its Priorities and Commitments? **Response:** Yes, Oregon adequately documented progress made in 2011 in the NPS annual report for the portion of 319 funds going into the PPG, including progress under the PPG Priorities and Commitments.

### **Identifying and Addressing Performance Issues/Progress Concerns**

- 1) Briefly describe any significant outstanding 319 grant performance issues or progress concerns, including if any corrective actions are underway. **Response:** There are no significant outstanding 319 grant performance issues or progress concerns. The primary issues addressed in the satisfactory progress determination review letter for Oregon are: (1) the need for the state to update their 2000 NPS management plan and priorities, and (2) to continue to leverage 319 funds with other funding sources and focus funding toward implementation of watershed-based/TMDL plans.